UNIFIED PROGRAM REGULATORY PERFORMANCE MODEL
January 2007

INTRODUCTION

Local environmental regulatory agencies are charged with accomplishing a very broad and challenging mission of "protecting public health and the environment" within a context of ever increasing environmental regulatory scope and complexity, increased staff technical qualification requirements, and continuing budget and funding constraints.

As agencies strive to effectively accomplish this broad mission, they must continually establish and evaluate priorities, implement comprehensive program elements and varied compliance strategies described in this model, seek continual program improvement through innovation, and ensure that all entities subject to regulation are identified and in compliance with program standards.

Management flexibility to continually improve their programs and to allocate and adjust staff resources to address the highest environmental and public safety priorities is essential. However, managers are increasingly experiencing conflicts between their ability to address these priorities and the requirement to meet statutorily mandated "one size fits all "inspection frequencies.

Under current inspection frequency mandates, all regulated entities are subject to the same routine inspection frequency regardless of their prior compliance history, the volume and type of materials or processes subject to regulation, the use or absence of "state of the art" technology, system or facility design and maintenance, proximity to sensitive receptors and similar priority or qualitative "risk based" considerations. Neither do they consider other compliance strategies with proven value.

The Unified Program Regulatory Performance Model (UP-RPM) describes the elements of a comprehensive regulatory program and criteria for priority considerations that would form the framework for establishing a CUPA/Cal/EPA pilot program to test and measure innovative and potentially more effective "Alternative Compliance Strategies".

These innovative strategies are intended to provide appropriate flexibility in utilization of staff resources to effectively address the highest environmental and public health priorities while maintaining adequate oversight of all regulated entities. This may include less frequent routine inspections of low "risk", compliant entities to allow for increased resource allocation to oversight of high "risk" entities, more effective enforcement at problem facilities and more complete implementation of essential program elements described in this model.

REQUIRED COMPONENTS

A successful environmental regulatory program involves the simultaneous implementation of several components. These include:

I. Regulatory Universe: Identification of all businesses or facilities within a jurisdiction subject to regulation.
II. Standard Setting: Clearly established and well publicized sets of compliance standards for each program including statutes, regulations, local ordinances, facility permits, enforceable orders and enforcement settlements.
III. Education and Outreach: A robust facility and industry wide outreach program that utilizes several different strategies to educate and facilitate compliance.
IV. Compliance Verification: A variety of processes and approaches including routine and alternative inspection/investigation strategies that efficiently utilize resources to verify regulated entity compliance.
V. Enforcement Response: A variety of informal and formal regulatory agency actions, used as appropriate, based on the nature and extent of non-compliance.
VI. Performance Indicators: Metrics to measure various activities, efforts, results and progress towards regulatory oversight program goals and objectives.
VII. Coordination: Coordination with other local, state and federal governmental agencies to more effectively meets common goals.
VIII. Priority Setting and Feedback Systems: Criteria for establishing periodic program priorities based on compliance conditions within the regulated community, qualitative risk determinations and the success or failure of current compliance verification strategies.

I. REGULATORY UNIVERSE IDENTIFICATION

Fundamental to all programs is the identification of all businesses or facilities within a given jurisdiction that are subject to regulation. An appropriate strategy should be in routine use to identify industries that have not typically been included in the regulatory universe and those entities that should be regulated but have evaded regulatory oversight.

II. STANDARD SETTING

A second foundation component is clearly established and well publicized compliance standards for regulated entities within each program. Such standards may include statutes, regulations, local ordinances, facility permits, enforceable orders and enforcement settlements.

Industry compliance guides, educational outreach materials and agency regulatory interpretations must clearly match program standards, are consistent and coordinated with appropriate federal, state and local agencies and freely available to the regulated community.

Standards applicable to regulatory agencies, such as mandated inspection frequencies, should include flexibility based on specified criteria, to allow for enhanced agency oversight of facilities or industry sectors that present elevated levels of either short-term or long-term risk.

A regulatory agency's specific inspection/enforcement strategies should be irrelevant and unknown to regulated entities who should expect unannounced inspections at any reasonable time. Full and continued compliance regardless of inspection frequency should be the consistent goal.

III. EDUCATION AND OUTREACH

An effective tool in enhancing compliance is regular use of a variety of educational options that inform the regulated community of compliance standards.

These tools can include newsletters, informational brochures, online resources, and training workshops and seminars as well as technical assistance, compliance manuals and checklists.

This outreach effort can also include the commitment to ongoing coordination efforts with representatives of affected major industry groups and professional organizations.

IV. COMPLIANCE VERIFICATION

A robust use of the full range of compliance verification tools ensures that non-compliance is quickly identified and corrected and those voluntarily complying are not placed at a competitive disadvantage. In fact voluntary compliance, the expectation and core of all environmental regulatory programs, is only realistic when an effective compliance determination program ensures that compliance doesn't result in an economic disadvantage.

Providing satisfactory regulatory oversight with limited resources is a daily challenge for CUPA Program Managers. Crucial to this effort is the ability to allocate staff resources to all elements of a comprehensive program, based on an analysis of need and measures of effectiveness.

V. ENFORCEMENT RESPONSE

Consistent and appropriate use of the available informal and formal enforcement tools and/or techniques to address noncompliance is essential to ensuring a high level of regulatory compliance across program elements.

The Unified Program Inspection and Enforcement Plan, Violation Classification Guidance, Inspection Report Writing and similar documents identify enforcement tools available to UPA s and their appropriate use.

VI. PEFORMANCE INDICATORS

These indicators measures of program performance should evaluate and communicate the effectiveness of agency activities in relation to the agency mission.

All measures should be: Relevant to program goals, objectives or priorities, Transparent, by being accessible, understandable and useful to stakeholders and managers, Credible by being based on complete and accurate data and Feasible so that the value of the metric outweighs the cost of implementation.

Appropriate metrics may include:

A. OUTPUTS –historic metrics of number of inspections, enforcement actions, number of outreach events or compliance assistance events, penalty amounts, etc.

B. OUTCOMES – these metrics measure the results of the output activities.

C. TRACKING TRENDS – Changes in metrics over time as opposed to absolute numbers. Data needs to be normalized to present a valid statistic and base data must be available or established.

VII. COORDINATION

Local programs need to interface with other governmental agencies to share information and workload and coordinate inspection and enforcement activities. (Other coordination efforts might include industry or environmental groups identified in # III above).

Specific coordination efforts should include the following entities:

A. Environmental Crimes Task forces
B. Other related regulatory agencies
C. Law enforcement
D. Prosecutors

VIII. PRIORITY SETTING AND FEEDBACK SYSTEMS

Criteria used to establish inspection/enforcement priorities should consider issues such as:

A. Facility compliance history
B. Nature and type of facility activities
C. Facility location in relation to potential receptors
D. Type and quantity of materials handled
E. Facility engineering or technology
F. Other enforcement priorities